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**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2005-64280

DAVID CHARLET  
18607 Ventura Blvd., No. 210  
Tarzana CA 91356

**ACCUSATION**

Physical Therapist License No. PT 20035,  
Respondent.

Complainant alleges:

**PARTIES**

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Physical Therapy Board of California, Department of Consumer Affairs (Board).

2. On or about August 26, 1994, the Board issued Physical Therapist License Number PT 20035 to David Charlet (Respondent). Unless renewed, the license will expire on August 31, 2006.

**JURISDICTION**

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1                   4.       Section 2609 of the Code provides:

2                               “The board shall issue, suspend, and revoke licenses and approvals  
3 to practice physical therapy as provided in this chapter.”

4                   5.       Section 2660 of the Code provides:

5                               “The board may, after the conduct of appropriate proceedings under the  
6 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or  
7 impose probationary conditions upon any license, certificate, or approval issued under  
8 this chapter for unprofessional conduct that includes, but is not limited to, one or any  
9 combination of the following causes:

10                               “ . . .

11                               “(d) Conviction of a crime which substantially relates to the  
12 qualifications, functions, or duties of a physical therapist or physical therapy assistant.  
13 The record of conviction or a certified copy thereof shall be conclusive evidence of that  
14 conviction.

15                               “ . . .

16                               “(l) The commission of any fraudulent, dishonest, or corrupt act which is  
17 substantially related to the qualifications, functions, or duties of a physical therapist or  
18 physical therapy assistant.

19                               “ . . .”

20                   6.       Section 2661.5 of the Code provides:

21                               “(a) In any order issued in resolution of a disciplinary proceeding before  
22 the board, the board may request the administrative law judge to direct any licensee found  
23 guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and  
24 reasonable costs of the investigation and prosecution of the case.

25                               “(b) The costs to be assessed shall be fixed by the administrative law  
26 judge and shall not in any event be increased by the board. When the board does not  
27 adopt a proposed decision and remands the case to an administrative law judge, the  
28 administrative law judge shall not increase the amount of the assessed costs specified in

1 the proposed decision.

2 “(c) When the payment directed in an order for payment of costs is not  
3 made by the licensee, the board may enforce the order of payment by bringing an action  
4 in any appropriate court. This right of enforcement shall be in addition to any other rights  
5 the board may have as to any licensee directed to pay costs.

6 “(d) In any judicial action for the recovery of costs, proof of the board's  
7 decision shall be conclusive proof of the validity of the order of payment and the terms  
8 for payment.

9 “(e) (1) Except as provided in paragraph (2), the board shall not renew or  
10 reinstate the license or approval of any person who has failed to pay all of the costs  
11 ordered under this section.

12 “(2) Notwithstanding paragraph (1), the board may, in its discretion,  
13 conditionally renew or reinstate for a maximum of one year the license or approval of any  
14 person who demonstrates financial hardship and who enters into a formal agreement with  
15 the board to reimburse the board within that one year period for those unpaid costs.

16 “(f) All costs recovered under this section shall be deposited in the  
17 Physical Therapy Fund as a reimbursement in either the fiscal year in which the costs are  
18 actually recovered or the previous fiscal year, as the board may direct.”

19 7. Section 2661 of the Code provides:

20 “A plea or verdict of guilty or a conviction following a plea of nolo  
21 contendere made to a charge of a felony or of any offense which substantially  
22 relates to the qualifications, functions, or duties of a physical therapist is deemed  
23 to be a conviction within the meaning of this article. The board may order the  
24 license suspended or revoked, or may decline to issue a license, when the time for  
25 appeal has elapsed, or the judgement of conviction has been affirmed on appeal or  
26 when an order granting probation is made suspending the imposition of sentence,  
27 irrespective of a subsequent order under Section 1203.4 of the Penal Code  
28 allowing that person to withdraw his or her plea of guilty and to enter a plea of not

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
2 information, or indictment.”

3 8. Section 2666 of the Code provides:

4 “(a) Criteria for acceptance into the diversion program shall include all of  
5 the following:

6 “(1) The applicant shall be licensed as a physical therapist or approved as  
7 a physical therapist assistant by the board and shall be a resident of California.

8 “(2) The applicant shall be found to abuse dangerous drugs or alcoholic  
9 beverages in a manner which may affect his or her ability to practice physical therapy  
10 safely or competently.

11 “(3) The applicant shall have voluntarily requested admission to the  
12 program or shall be accepted into the program in accordance with terms and conditions  
13 resulting from a disciplinary action.

14 “(4) The applicant shall agree to undertake any medical or psychiatric  
15 examination ordered to evaluate the applicant for participation in the program.

16 “(5) The applicant shall cooperate with the program by providing medical  
17 information, disclosure authorizations, and releases of liability as may be necessary for  
18 participation in the program.

19 “(6) The applicant shall agree in writing to cooperate with all elements of  
20 the treatment program designed for him or her. Any applicant may be denied  
21 participation in the program if the board, its designee, or a diversion evaluation  
22 committee, as the case may be, determines that the applicant will not substantially benefit  
23 from participation in the program or that the applicant's participation in the program  
24 creates too great a risk to the public health, safety, or welfare.

25 “(b) A participant may be terminated from the program for any of the  
26 following reasons:

27 “(1) The participant has successfully completed the treatment program.

28 “(2) The participant has failed to comply with the treatment program

1 designated for him or her.

2 “(3) The participant fails to meet any of the criteria set forth in  
3 subdivision (a) or (c).”

4 “(4) It is determined that the participant has not substantially benefitted  
5 from participation in the program or that his or her continued participation in the program  
6 creates too great a risk to the public health, safety, or welfare. Whenever an applicant is  
7 denied participation in the program or a participant is terminated from the program for  
8 any reason other than successful completion of the program, and it is determined that the  
9 continued practice of physical therapy by that individual creates too great a risk to the  
10 public health, safety, and welfare, that fact shall be reported to the executive officer of the  
11 board and all documents and information pertaining to and supporting that conclusion  
12 shall be provided to the executive officer. The matter may be referred for investigation  
13 and disciplinary action by the board. Each physical therapist or physical therapy assistant  
14 who requests participation in a diversion program shall agree to cooperate with the  
15 recovery program designed for him or her. Any failure to comply with that program may  
16 result in termination of participation in the program. The diversion evaluation committee  
17 shall inform each participant in the program of the procedures followed in the program, of  
18 the rights and responsibilities of a physical therapist or physical therapy assistant in the  
19 program, and the possible results of noncompliance with the program.

20 “(c) In addition to the criteria and causes set forth in subdivision (a), the  
21 board may set forth in its regulations additional criterial for admission to the program or  
22 causes for termination from the program. “

23 9. Section 2667 of the Code provides:

24 “All board and diversion evaluation committee records and records of  
25 proceedings and participation of a physical therapist or physical therapy assistant in a  
26 program shall be confidential and are not subject to discovery or subpoena.”

27 10. Section 2669 of the Code states that participation in a diversion program  
28 shall not be a defense to any disciplinary action which may be taken by the board. This section

1 does not preclude the board from commencing disciplinary action against a physical therapist or  
2 physical therapist assistant who is terminated unsuccessfully from the program under this section.  
3 That disciplinary action may not include as evidence any confidential information.

4 11. Section 490 of the Code provides:

5 “A board may suspend or revoke a license on the ground that the licensee  
6 has been convicted of a crime, if the crime is substantially related to the qualifications,  
7 functions, or duties of the business or profession for which the license was issued. A  
8 conviction within the meaning of this section means a plea or verdict of guilty or a  
9 conviction following a plea of nolo contendere. Any action which a board is permitted to  
10 take following the establishment of a conviction may be taken when the time for appeal  
11 has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order  
12 granting probation is made suspending the imposition of sentence, irrespective of a  
13 subsequent order under the provisions of Section 1203.4 of the Penal Code.”

14 12. Section 492 of the Code provides:

15 “Notwithstanding any other provision of law, successful completion of any  
16 diversion program under the Penal Code, or successful completion of an alcohol and drug  
17 problem assessment program under Article 5 (commencing with section 23249.50) of  
18 Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established  
19 under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any  
20 initiative act referred to in that division, from taking disciplinary action against a licensee  
21 or from denying a license for professional misconduct, notwithstanding that evidence of  
22 that misconduct may be recorded in a record pertaining to an arrest.

23 “This section shall not be construed to apply to any drug diversion  
24 program operated by any agency established under Division 2 (commencing with Section  
25 500) of this code, or any initiative act referred to in that division.”

26 13. California Code of Regulations, title 16, section 1399.20, provides:

27 “For the purposes of denial, suspension or revocation of a license,  
28 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall

1 be considered to be substantially related to the qualifications, functions or duties of a  
2 person holding a license under the Physical Therapy Practice Act if to a substantial degree  
3 it evidences present or potential unfitness of a person to perform the functions authorized  
4 by the license or approval in a manner consistent with the public health, safety or welfare.  
5 Such crimes or acts shall include but not be limited to the following:"

6 "(a) Violating or attempting to violate, directly or indirectly, or assisting in  
7 or abetting the violation of, or conspiring to violate any provision or term of the Physical  
8 Therapy Practice Act.

9 "(b) Conviction of a crime involving fiscal dishonesty arising out of or in  
10 connection with the practice of physical therapy.

11 "(c) Violating or attempting to violate any provision or term of the  
12 Medical Practice Act."

### 13 **FIRST CAUSE FOR DISCIPLINE**

#### 14 **(Conviction of Crime)**

15 14. Respondent is subject to disciplinary action under sections 490, generally,  
16 and 2660, subdivision (d), specifically, in that he has sustained a criminal conviction for an  
17 offense which under the facts and circumstances of its commission is substantially related to the  
18 practice of physical therapy, as follows:

19 A. On or about May 30, 2005, at or about 10 p.m., after consuming a  
20 number of alcoholic beverages at a party in Long Beach, California, Respondent  
21 proceeded to drive to his home in Burbank, California. The distance between the cities of  
22 Long Beach and Burbank is approximately 40 miles.

23 B. After driving approximately 20 miles, Respondent lost control of  
24 his vehicle, struck the vehicle immediately ahead of him, careened off the road and  
25 crashed into a guard rail. Two California Highway Patrol officers responded to the scene  
26 and administered a field sobriety test and two breath test to Respondent. Respondent was  
27 unable to complete the field sobriety test successfully. Respondent's blood alcohol level  
28 was measured at .19 percent, over twice the legal limit of .08 percent. Respondent told

1 the officers that he, Respondent, had ingested two “shots”<sup>1</sup> of vodka approximately one  
2 hour earlier while in the parking lot of a liquor store.

3 C. On or about June 28, 2005, in the case entitled *People of the State*  
4 *of California v. David Charlet*, Los Angeles County Superior Court No. 05ELC5966,  
5 Respondent was charged in Count 1 with driving under the influence of alcohol or drugs,  
6 in violation of Vehicle Code section 23152, subdivision (a), a misdemeanor, and in Count  
7 2 with driving while having a blood alcohol level .08 percent or more, in violation of  
8 Vehicle Code section 23152, subdivision (b), a misdemeanor..

9 D. On or about January 23, 2006, pursuant to a negotiated plea  
10 agreement, the misdemeanor complaint was amended to add the offense of reckless  
11 driving, in violation of Vehicle Code section 23103, a misdemeanor. Respondent entered  
12 a plea of nolo contendere to the new charge. The original charges were dismissed in the  
13 interest of justice. Respondent was fined and ordered to complete a first offender alcohol  
14 program and not to drive other than to and from work for a period of 90 days.

15 E. The Physical Therapy Board of California was notified of  
16 Respondent’s arrest. Respondent was asked to submit a statement of the underlying facts  
17 and circumstances leading up to his arrest. On or about July 6, 2005, Respondent  
18 submitted a letter to the Board in which he wrote:

19 “At around 10 pm that day, Memorial Day, I was driving home  
20 from a pool party with some friends in Long Beach. I was heading  
21 North on the 710 freeway on my home to Burbank. [¶] The traffic  
22 was busy but still fluid, I was driving the speed limit around 65  
23 mph. As I reached the connector to the I-5 freeway, the car in front  
24 of me hit the brakes pretty suddenly, in an effort to avoid a  
25 collision, I used my brakes, steered the wheel to the left and lost  
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27  
28 1. A typical “shot” equals one and one-half ounces. That the drinking occurred in the  
parking lot of a liquor store was not described.



1 control of my vehicle. **I did not hit any other car . . . .”** [¶] A  
2 car, which was following, witnessed the accident and called the  
3 highway patrol. When they arrived on the site, they asked a few  
4 question [*sic*] regarding how this happened and then gave me some  
5 physical test, **which I performed successfully . . . .”**

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Dishonest Acts)**

8 15. Respondent is subject to disciplinary action under section 2660,  
9 subdivision (l), for committing dishonest acts by submitting a report to the Physical Therapy  
10 Board which did not contain an accurate or complete recitation of the events leading up to  
11 Respondent’s arrest and wrongfully advised the Physical Therapy Board that Respondent  
12 successfully completed the field sobriety test administered to him and, too, that no other car was  
13 damaged which he, Respondent, lost control of his vehicle, as follows:

14 A. Complainant refers to and, by this reference, incorporates herein  
15 paragraph 14, subparagraphs A through E, above, as though fully set forth.  
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1 **PRAYER**

2 **WHEREFORE**, Complainant requests that a hearing be held on the matters  
3 herein alleged, and that following the hearing, the Physical Therapy Board of California issue a  
4 decision:

5 1. Revoking or suspending Physical Therapist License Number PT 20035,  
6 issued to David Charlet;

7 2. Ordering David Charlet to pay the Physical Therapy Board of California  
8 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
9 Professions Code section 2661; and,

10 3. Taking such other and further action as deemed necessary and proper.

11 DATED: August 9, 2006

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14 Original Signed By:  
15 STEVEN K. HARTZELL  
16 Executive Director  
17 Physical Therapy Board of California  
18 Department of Consumer Affairs  
19 State of California  
20 Complainant

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